IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 2ND JANUARY 2007 / 12TH PAUSHA 1928

OP.No. 10486 of 2003(W)

PETITIONER:

M/S.INFRA INDUSTRIES LTD. REGD.OFF.
DHIRAJ CHAMBERS, HAZARIMAL SOMANI MARG, MUMBAI-1
HAVING ITS BRANCH AT ATHIRA BUILDING, KMA.31/188A,
PUTHUPALLIPURAM, SOUTH EDAPPALLY, KOCHI-24,
REPRESENTED BY ITS AREA SALES MANAGER,
SRI.S.PADMANABHAN.

BY ADV. SRI.ABRAHAM VAKKANAL

RESPONDENTS:

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1. **THE DEPUTY DIRECTOR, EMPLOYEES**
   STATE INSURANCE CORPORATION, PANCHDEEP BHAVAN,
   NORTH SWARAJ ROUND, P.B.NO.2, THRISSUR-680 020.

2. **THE ASST.DIRECTOR/DEPUTY DIRECTOR,**
   EMPLOYEES STATE INSURANCE CORPORATION,
   PANCHDEEP BHAVAN, COLABA, MUMBAI-400 005.

3. **THE KERALA HEADLOAD WORKERS WELFARE**
   BOARD, P.B.NO.2017, S.R.M.ROAD, KOCHI-682 018,
   REPRESENTED BY ITS CHIEF EXECUTIVE.

4. **THE KERALA HEADLOAD WORKERS WELFARE**
   BOARD, KALAMASSERY SUB OFFICE, EDAPPILLY TOLL,
   KOCHI-24, REPRESENTED BY ITS CHAIRMAN.

BY ADV. SRI.A.V.RAMAKRISHNA PANICKER, SC,KHLWWB
SMT.T.D.RAJALAKSHMY, SC, ESI CORPN.
SRI.R.SATHISH KUMAR, SC, KHLWWB

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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O.P.No.10486 of 2003

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Dated this the 3rd day of January, 2007

J U D G M E N T

The petitioner has approached this court seeking the following reliefs:

"i) to declare whether the casual headload workers supplied by Respondents 3 and 4 and engaged by the petitioner in its premises, are employees under Section 2(9) of the E.S.I. Act and whether petitioner is liable to pay ESI contribution to Respondents 1 and 2 on behalf of such casual head load workers as demanded in Exts.P1 and P10 and other similar communications of Respondents 1 and 2.

ii) to issue a writ of certiorari or other appropriate order or direction quashing Exts.P1, P10 and communications on similar line to the petitioner to remit ESI contribution in respect of casual headload workers sent to the petitioner's premises for work by Respondents 3 and 4, as they are not employees of the petitioner, as defined under Section 2(9) of the ESI Act.

iii) to permit the petitioner to deduct 6.5% from the wages payable to the Headload workers and to be remitted with the 4th respondent and to keep it in separate account, till this Hon'ble Court takes a decision on this issue as mentioned above.

iv) to stay all further proceedings by Respondents 1 and 2 pursuant to Ext.P10 to determine the amount and recover it from the petitioner as if revenue due on land as threatened in Ext.P10."

In order to grant these reliefs, the petitioner would have to certainly adduce evidence to prove facts which are relevant to decide the issues which cannot be done in proceedings under Article 226 of the Constitution of India. In any event, the petitioner has got an effective alternate remedy by way of filing an application under Section 75 of the Employees State Insurance Act before the Employees Insurance Court where he can prove the facts necessary for deciding the issues involved by adducing oral and documentary evidence. Without prejudice to such right, this original petition is dismissed.

Interlocutory applications stand closed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

S.SIRI JAGAN, J.

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O.P.No.10486 of 2003

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J U D G M E N T

3rd January, 2007